

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FOUZIA AZIZ, §
§
Plaintiff v. § CIVIL CAUSE NO. _____
§
FEDEX GROUND PACKAGE § Jury Trial Demanded
SYSTEM, INC., and §
§
FEDEX CORPORATION, §
§
Defendants §

Plaintiff's Original Complaint

Fouzia Aziz, by and through her undersigned counsel, files this Original Complaint against FedEx Ground Package System, Inc., and FedEx Corporation under 42 U.S.C. §§ 1981, 1982, 1985(3) and 1986 based on the direct actions of FedEx Ground and FedEx Corporation and a conspiracy to deny her the full and equal benefit and protection of the laws based on her race/ethnicity and gender. In support thereof, she alleges as follows:

Summary Overview

1. On October 13, 2017, Sohail Masood received a strand of group text messages from FedEx Ground contractors¹ openly referring to him—or his wife, Fouzia Aziz—as “the nigga from McKinney,” and threatening to “teach [them] a lesson.” The text messages continued, threatening that a “Dead man can’t pay shit,” implying that if Sohail or Fouzia—as a principal of BZ Transport, Inc.; FSZ Logistics, Inc.; and Husky Tiger, Inc., competing FedEx contractors²—were “dead,”

¹ The text appears to have inadvertently—at least initially—included Sohail on the distribution list. The recipients of the group texts may have included persons directly employed by FedEx Ground, or such persons may have been privy to the group text at the time that they were sent.

² As explained further below, FedEx contractors, such as BZ Transport, Inc., deliver packages on FedEx’s behalf to contracted geographic areas.

those entities would not be able to compete with the other contractors by offering higher salaries to potential employees. The threatening texts were sent less than two weeks after FedEx Ground had forced Sohail and Fouzia to move the operations of the three companies owned by/associated with them hours away from their historic base in Sherman, Texas to a hostile environment in Mesquite, Texas. The text thread was initiated by FedEx contractor, Aaron Symank, a close friend of FedEx Ground's District Manager and the Senior Manager in charge of the Mesquite terminal.

2. Later that evening, Fouzia received an anonymous, intimidating phone call with "inside" information threatening that FedEx was going to shut down her business (BZ Transport) and taunting her that FedEx was "going to get rid of FSZ and Husky too"—two other companies associated with Fouzia and Sohail. It is not clear how a non-FedEx employee would have been privy to such information. The caller appeared to be a FedEx contractor, and Fouzia believed it to be Symank. Fouzia informed FedEx Corporation security about the text and phone threats, as FedEx Corporation provides security to the FedEx Mesquite terminal. She also informed FedEx Ground of the threats through its local management at its Mesquite terminal. Sohail and Fouzia even wrote directly to FedEx's Chairman, Fredrick Smith, providing a transcript of the threatening text messages and imploring him to address the situation. In fact, they wrote two subsequent emails to Mr. Smith that went unanswered, as did their emails to others.

3. FedEx's response? It took no action to stop the racial/ethnic threats, stating only that it would "investigate the allegations." To this day, FedEx has never notified Fouzia or Sohail of any findings or security actions. While the response may be part of a larger overall deficiency in FedEx security, it was more personal and intentional here. FedEx Ground District Manager, Chad Allen, brushed the incident off, stating that it merely "look[ed] like some buddies got drunk and had some fun"—a remarkable response, to say the least, from the top-level manager at the facility to

references to “teaching . . . a lesson” to a “nigga” and threatening references to a “dead man.” His tone conveyed complete disdain for Fouzia. FedEx Contract Relations manager, Brian Tangi, who is under Allen’s control, toed the company line and further downplayed the incident with a remarkably similar response, telling Fouzia and Sohail that it sounded like FedEx contractors must have had too much to drink. Fouzia and Sohail had nowhere left to turn within FedEx. And although they were aware of the threats, FedEx and FedEx Ground took no affirmative steps whatsoever to prevent or stop these actions or to provide them any assurance of their safety. From this point forward, Fouzia felt physically threatened at the Mesquite terminal and faced increasing ethnic- and gender-based discrimination.

4. To add insult to injury, within a week of being notified of the threats, FedEx Ground responded by issuing a letter that it was formally reviewing BZ Transport’s contract for termination. While it had been in a dispute with BZ Transport over the contract, its actions were retaliatory, and rather than holding itself to the high ethical standards that it publicly professes, it took no steps to address the ethnically animated threats against Fouzia and Sohail, leaving them to feel physically threatened every day as they showed up for work at the FedEx Mesquite terminal.

5. Ultimately, FedEx Ground terminated BZ Transport’s contract. It then awarded a significant portion of BZ Transport’s geographic area under its contract to a company owned by Aaron Symank. FedEx management and certain of its contractors engaged in a continued conspiracy targeted at Fouzia and designed to deny her the equal protection and benefit of the laws and to interfere with her right to hold property (her interests in such businesses). It was animated by her ethnicity and gender—as Fouzia’s leadership of several contractor companies at the FedEx Mesquite terminal threatened the almost exclusively white-male FedEx management at the terminal and changed the fact that there were no other female or middle-eastern-run contractor

companies at the terminal. The actions and conspiracy specifically targeted several businesses owned by, or associated with, Fouzia and Sohail, and sought to destroy those businesses (and to move their contracted delivery routes to favored contractors, such as Symank), all in an effort to deny Fouzia the full and equal benefit and protection of the laws and to interfere with her right to hold property. These actions also denied her the same right to make and enforce contracts as other persons.

6. FedEx Ground management engaged in a continued series of discrimination against Fouzia. For instance, in one of the more heated incidents, in January of 2018—the day after Fouzia returned to the terminal from her father’s funeral—Jim Overhulse, the Senior Manager of FedEx Ground at the Mesquite terminal, barged into a meeting and berated Fouzia, standing over her in an intimidating fashion and belittling her, calling her the “worst” FedEx contractor. Although Fouzia informed him of her father’s recent, unexpected death, he continued, stating that he and Chad Allen were “sick and tired” of her excuses, and that he wanted her at the terminal every day for a 7:30 AM morning meeting with FedEx. FedEx management does not treat any other contractor in this manner. Fouzia was devastated. Fouzia suffered a debilitating mental and emotional impact from this and prior events, which in turn caused damages to the companies that she ran, further damaging her financially.

The Parties

7. Fouzia Aziz is an individual who resides at 101 Diamond Pointe Loope, Dennison, Texas 75020. Fouzia is originally from Kuwait, and thus is of Middle Eastern ethnicity.

8. FedEx Ground Package System, Inc. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. At all relevant times, FedEx Ground was engaged in the business of the delivery of packages nationwide and within the state of Texas.

9. FedEx Corporation is a Delaware corporation with a principal place of business in Memphis, Tennessee. At all relevant times, FedEx Corporation was engaged in business nationwide and within the state of Texas.

Jurisdiction and Venue

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

11. Venue is proper under 28 U.S.C. § 1391. FedEx Ground resides, within the meaning of the federal venue statutes, in the Eastern District of Texas, and a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Texas.

Factual Background

12. FedEx Ground operates a package pickup and delivery business that services customers throughout the United States. FedEx Ground partners with, and provides these delivery and pickup services through, intermediary employers known as “independent service providers” (“ISPs”).

13. BZ, FSZ, and Husky Tiger are ISPs pursuant to a contract with FedEx Ground known as an “Independent Service Provider Agreement” (“ISP Agreement”).³

14. Fouzia is the sole shareholder of FSZ Logistics, Inc. She is also a beneficial owner of BZ Transport, Inc. and Husky Tiger, Inc. She controls all three entities and functions in an executive capacity for each entity.

15. Historically and until the latter part of 2017, BZ, FSZ, and Husky had operated out of the FedEx-owned and managed terminal located in Sherman, Texas. Their geographic service areas are entirely in the Eastern District of Texas, primarily in the McKinney area and relatively convenient to Sherman. A FedEx terminal serves as a hub where drivers pickup and drop off

³ BZ, FSZ, and Husky Tiger are all engaged in pending arbitration hearings with FedEx Ground that are currently docketed with JAMS. Fouzia is not a party to those hearings in her personal capacity. Those actions involve allegations that FedEx Ground breached its ISP agreement; they do not involve claims pursuant to 42 U.S.C. §§ 1981, 1985(3) or 1986.

packages for delivery. FedEx managers, package handlers, and other FedEx employees oversee and manage the terminal operations. FedEx employees located at the terminal are responsible for sorting packages and loading those packages onto drivers' trucks. ISPs then physically deliver packages to FedEx customers on FedEx's behalf.

16. In 2017, Fouzia was informed that FedEx intended to move BZ, FSZ, and Husky to its Mesquite terminal, despite the fact that the geographic areas that they serviced (e.g., McKinney) were substantially further away from that location and separated by significant urban traffic in the Dallas area—thus raising questions about the true motivation for forcing the companies to move to a much further terminal when FedEx had a Sherman terminal. The move would require BZ, FSZ, and Husky drivers to commute a substantial distance across busy highways in order to deliver packages from the new terminal, placing significant and increased pressure on their operating costs. The move was designed to harm Fouzia and to place strain on her businesses.

17. Shortly thereafter, on May 3, 2017, a FedEx supervisor showed up unannounced at the Sherman terminal and began inspecting BZ Transport's trucks and terminal locations, taking notes and initiating unauthorized discussions with BZ Transport employees. The FedEx engineer was antagonistic and explicitly warned several BZ Transport employees that BZ employees would be losing their jobs because the company's operations were being moved to the Mesquite terminal. He further informed them that he was there to observe how BZ Transport operated so that FedEx could replace BZ Transport and so that the “next guy” could pick up operations when FedEx Ground removed BZ Transport. It is believed that he was instructed to make such harmful statements. This interference with BZ's contract was designed to harm Fouzia and Sohail.

18. Such statements would obviously have a negative effect on a business. Indeed, the engineer's actions set off a domino effect. As a direct result of his acts and within a matter of

days/weeks of this encounter, BZ Transport drivers (some of whom had been there for years) left the company, concerned about their job security in light of the FedEx engineer's statements and threats.

19. Fouzia, through her affiliation with Husky, utilized Husky's resources and drivers to mitigate the damages caused by the FedEx supervisor in order to continue BZ's operations. This, of course, ultimately put significant strain on Husky and impacted Husky's performance, causing damage to Fouzia as an owner of Husky. In addition, while FedEx Ground offered "contingency" payments—that is, slightly higher pay rates—to any other contractor that would assist with servicing BZ's (or any other contractor's territory), it refused to offer such compensation to Husky (because of Fouzia's relationship) even though it did in fact pay such rates to other contractors for performing the exact same work and even though the need for Husky to service the area was caused by FedEx.

20. On October 6, 2017, a mere one week after BZ Transport was moved to the Mesquite terminal (a move that cost it tens of thousands of dollars), the FedEx Ground Station Senior Manager, at the direction of District Manager, Chad Allen, issued a letter to BZ Transport warning that FedEx Ground may pursue termination of its ISP Agreement because of its performance. FedEx Ground had experienced massive performance problems at the Mesquite terminal that caused significant delays and difficulties for various contractors. FedEx Ground managers had planned to provide the notice long before it forced Fouzia to move operations to Mesquite.

21. On October 13, 2017, Sohail received a strand of group text messages from FedEx Ground contractors openly referring to him—or his wife, Fouzia—as "the nigga from McKinney," and threatening to "teach [them] a lesson." The text thread was initiated by FedEx ISP, Aaron Symank. One threat referred to the competitive wages BZ, FSZ, and Husky were offering to drivers, and

stated that a “Dead man can’t pay shit where I am from,” threatening that if he or Fouzia were to find themselves a “dead man,” the entities would not be able to compete with the other contractors. The text thread was initiated by FedEx contractor, Aaron Symank, a close friend of FedEx’s District Manager. The threats raised serious concerns given the obvious racial/ethnic animus behind the communications, and the fact that no one on the thread retracted any such statements or threats.

22. Fouzia subsequently received an anonymous, threatening phone call with “inside” information threatening that FedEx was going to shut down BZ Transport and taunting her that FedEx was “going to get rid of FSZ and Husky too”—two other companies associated with Fouzia and Sohail. The caller appeared to be a FedEx contractor. After the texts and the anonymous, threatening phone call, Fouzia was very scared to go into the Mesquite terminal and felt physically threatened.

23. Fouzia informed FedEx Corporation security about the incident, as FedEx Corporation provides security to local FedEx terminals. She also informed FedEx Ground of the threats through its local management at its Mesquite terminal. Sohail and Fouzia even wrote directly to FedEx’s Chairman, Fredrick Smith, providing a transcript of the threatening text messages. FedEx took no action to stop the racial/ethnic threats, stating only that it would investigate the allegations. FedEx District Manager, Chad Allen, brushed the incident off, stating that it merely “look[ed] like some buddies got drunk and had some fun.” FedEx Contract Relations manager, Brian Tangi, further downplayed the incident Fouzia and Sohail that it sounded like it was FedEx contractors must have had too much to drink. From this point forward, Fouzia felt physically threatened at the Mesquite terminal and faced increasing ethnically- and gender-based discrimination.

24. Within a week of being notified of the threats, FedEx Ground issued a letter informing them that it was formally reviewing BZ Transport's contract for termination.⁴ While it had been in a dispute with BZ Transport over the contract, its actions were retaliatory, and rather than holding itself to the high ethical standards that it publicly professes, it took no steps to address the ethnically animated threats against Fouzia and Sohail, leaving them to feel physically threatened every day as they showed up for work at the FedEx Mesquite terminal.

25. After terminating BZ Transport's contract, FedEx Ground subsequently awarded part of the former BZ territory to a company owned by Aaron Symank. Such a transition was part of the conspiracy—indeed, it was one of the objectives—from the beginning.

26. The racial/ethnic and gender discrimination continued, all in an effort to deny Fouzia equal protection of the laws and to interfere with her right to hold and enjoy property. FedEx Ground management engaged in a continued series of discrimination against Fouzia. For instance, in a more heated incident in January of 2018—the day after Fouzia returned to the terminal from her father's funeral—Jim Overhulse, the Senior Manager of FedEx Ground at the Mesquite terminal, barged into a meeting and verbally berated Fouzia, standing over her in an intimidating fashion and belittling her. Although Fouzia informed him of her father's recent, unexpected death, he continued, stating that he was “sick and tired” of her excuses, and that he wanted her at the terminal every day for a morning meeting with FedEx. FedEx management does not treat any other

⁴ FedEx management also placed a number of improper restrictions on Fouzia's other related entities. For instance, FedEx District Manager previously instructed Fouzia that FSZ should not hire any more military veterans following a vehicle accident that involved an FSZ driver who happened to be a military veteran. The manager expressed concern that such drivers were more likely to exhibit PTSD, making them riskier and more vulnerable to accidents and to cause liability. (Exerting such control, as it did in many other respects, was not only in violation of its contract, but was also not consistent with the independent contractor relationship that FedEx purports to exist.). FSZ refused to comply.

contractor in this manner. FedEx Ground continued to take steps to push Fouzia and her related entities out.

27. Throughout this period, Fouzia began to suffer serious emotional distress. She was and felt physically threatened and discriminated against. For a significant period, she was essentially debilitated and unable to effectively carry on her responsibilities and duties in managing BZ, FSZ, and Husky. This caused further damage to the companies' performance, which ultimately caused significant damages to Fouzia.

Count I: 42 U.S.C. § 1981

28. Fouzia repeats and realleges each and every allegation set forth in paragraphs 1-27, inclusive, and incorporates them herein by reference. This is an action for violation of 42 U.S.C. § 1981 for the denial of the same right to make and enforce contracts and to the full and equal benefit of all laws.

29. Section 1981 provides, in relevant part, that:

- (a) All persons . . . shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . .
- (b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
- (c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

30. FedEx and FedEx Ground's discriminatory actions, which were based upon a racial/ethnic discriminatory animus and gender animus, denied Fouzia the same right to make and enforce

contracts, and to the full and equal benefit of the laws, thus constituting a violation of 42 U.S.C. § 1981.

Count II: 42 U.S.C. § 1982

31. Fouzia repeats and realleges each and every allegation set forth in paragraphs 1-27, inclusive, and incorporates them herein by reference. This is an action for violation of 42 U.S.C. § 1982.

32. Section 1982 provides that: “All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

33. FedEx and FedEx Ground’s discriminatory actions, which were based upon a racial/ethnic discriminatory animus and gender animus, denied Fouzia the same right to hold and convey personal property, namely her interests in the entities at issue, thus constituting a violation of 42 U.S.C. § 1982.

Count III: 42 U.S.C. § 1985(3)

34. Fouzia repeats and realleges each and every allegation set forth in paragraphs 1-27, inclusive, and incorporates them herein by reference. This is an action for violation of 42 U.S.C. § 1985(3) for conspiring to deprive her of the equal protection of the laws or of equal privileges and immunities under the laws and/or to deny her rights in violation of 42 U.S.C. § 1981.

35. Section 42 U.S.C. 1985(3) provides as follows:

(3) Depriving persons of rights or privileges If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such

conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

36. FedEx and FedEx Ground's discriminatory actions—including its conspiracy with FedEx contractors, including Aaron Symank and his company, and its and the co-conspirators' acts in furtherance of such conspiracy—which (1) were predicated on a violation of 42 U.S.C. § 1981 and/or (2) were based upon a racial/ethnic discriminatory animus and gender animus that denied her the equal protection of the laws, or equal privileges and immunities under the laws, constituted a violation of 42 U.S.C. § 1985(3).

Count IV: 42 U.S.C. § 1986

37. Fouzia repeats and realleges each and every allegation set forth in paragraphs 1-27, inclusive, and incorporates them herein by reference. This is an action for violation of 42 U.S.C. § 1986.

38. 42 U.S.C. § 1986 provides as follows:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in [42 USC § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action

39. Section 1986 imposes liability for negligence on persons who have knowledge of “wrongs visited upon persons, and although aware of the wrong, took no action.” *Thomas v. News World Communications*, 681 F.Supp. 55, 72 (D.D.C. 1988).

40. FedEx and FedEx Ground's discriminatory actions set forth above, and its knowledge of the wrongs conspired against Fouzia and protected by 42 U.S.C. § 1985, over which it had the

power to prevent or aid in preventing, and with respect to which it neglected or refused to so prevent or aid in preventing, constituted a violation of 42 U.S.C. § 1986.

Prayer For Relief

WHEREFORE, Plaintiff prays for judgment against Defendants on all counts set forth in this Complaint for damages as determined at trial of not less than \$1,500,000 with interest thereon, damages for emotional distress, punitive damages, attorneys' fees, costs, and such other and further relief as may be just.

Respectfully submitted,

By: /s/ Jason Freeman
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